



Thomas McCarthy <tom@consovoymccarthy.com>

SFFA v. UNC

Combs, Marianne H <Marianne.Combs@skadden.com>

Tue, Jul 31, 2018 at 11:21 PM

To: Patrick Strawbridge <patrick@consovoymccarthy.com>

Cc: Tom <tom@consovoymccarthy.com>, Stephanie Brennan <sbrennan@ncdoj.gov>, Nora Sullivan <nsullivan@ncdoj.gov>, "Fitzgerald, Patrick" <Patrick.Fitzgerald@skadden.com>, "Gilford, Lisa" <Lisa.Gilford@skadden.com>, "Flath, Lara A" <Lara.Flath@skadden.com>, "Moynihan, John" <John.Moynihan@skadden.com>

Patrick,

The University disagrees with SFFA's position regarding the appropriateness and feasibility of discovery at this stage of the case, particularly given the injunctive relief sought by SFFA. However, in a good faith effort to resolve this issue without court intervention, UNC will agree to withdraw Brian Smith as a potential witness. In addition, UNC intends to have Yolanda Keith only offer a declaration regarding the Carolina Advising Corp. This leaves 3 witnesses, Jonathan Pruitt, Rachelle Feldman, and Abigail Panter, whose depositions would be of limited scope. We think three depositions can be scheduled with sufficient time ahead of the September 21 summary judgment deadline if SFFA wishes to move forward with depositions of these witnesses.

In regards to your specific question, the 2017 Report discussed the University's intent to continue to evaluate its diversity and inclusion efforts, including expanded assessment and new ways to measure and assess the progress and impact of diversity and inclusion at the University. The activities of the Educational Benefits of Diversity Working Group encompass this work.

Regards,

Marianne

Marianne H. Combs**Skadden, Arps, Slate, Meagher & Flom LLP**

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From: Patrick Strawbridge [mailto:patrick@consovoymccarthy.com]**Sent:** Friday, July 27, 2018 7:14 AM**To:** Combs, Marianne H (CHI)**Cc:** Tom; Stephanie Brennan; Nora Sullivan; Fitzgerald, Patrick (CHI); Gilford, Lisa (LAC); Flath, Lara A (CHI); Moynihan, John (CHI)**Subject:** [Ext] Re: SFFA v. UNC

Marianne:

Given the current summary judgment date, the court's clear indication that nor further extensions of discovery would be allowed, and the impracticality of taking five new depositions in 30 days on short notice, we do not see how your proposal is feasible. More importantly, we do not agree that producing this new factual discovery at this point in the case is appropriate.

I do have one question: your email claims that "the Provost's 2017 report on the educational benefits of diversity . . . discussed future efforts the University intended to make." Are you contending that the report describes the creation of the future committee that was empaneled at the beginning of this year? If so, on what page?

Best,

Patrick Strawbridge

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On Jul 20, 2018, at 5:07 PM, Combs, Marianne H <Marianne.Combs@skadden.com> wrote:

Patrick,

We are responding to your concerns raised during the meet and confer discussion yesterday.

UNC believes that its most recent production is proper. This is a case for prospective relief and the University is entitled to produce, and rely upon, evidence relevant to the claims and defenses in this action. SFFA has been on notice at least since August 16, 2017 when we informed you in writing by letter that the University intended to produce evidence of its continuing efforts to comply with its ongoing Fisher I and Fisher II obligations. UNC made a similar production in December that provided SFFA with notice and opportunity to inquire about the University's current and future work. This most recent production supplemented UNC's extensive prior productions, brings you up to date on the ongoing work, and was made well before summary judgment and trial deadlines.

As to the documents from the Race Neutral Committee, SFFA was well aware that this group's work is ongoing. Moreover, although you claim you were not aware of the Educational Benefits of Diversity working group, during fact discovery, UNC produced the Provost's 2017 report on the educational benefits of diversity, which discussed future efforts the University intended to make, and SFFA had the opportunity to depose then-Provost Dean about the University's future plans. Notably, you have offered no expert (or other) evidence on the educational benefits of diversity in any event.

In regards to the witnesses disclosed in Defendants' Supplemental Initial disclosures, we understand SFFA to have no objection to the disclosure of Provost Robert Blouin as successor to Jim Dean. The remaining witnesses are witnesses who may submit declarations to rebut specific issues and claims made by SFFA's experts during expert discovery. UNC reserves the right to call them as trial witnesses, if necessary.

While we find SFFA's claim of prejudice to be unwarranted and note that SFFA has already received substantial discovery, nonetheless, in a good faith effort to compromise and avoid the need for court intervention, the University will make Abigail Panter available for a supplemental deposition on the subjects of the post-June 2017 work of the Committee on Race Neutral Strategies and Educational Benefits of Diversity Working Group. UNC will also make available for deposition Rachelle Feldman, Yolanda Keith, Brian Smith, and Jonathan Pruitt, limited to the specific topics disclosed in Defendants' Supplemental Initial Disclosures. UNC will make every effort to make these witnesses available within 30 days at a mutually convenient time.

Regards,

Marianne

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